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County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA

TUESDAY, JULY 12, 2011, 5:30 P.M.

San Diego County Administration Center

1600 Pacific Highway, Room 302/303, San Diego, 92101

The public portion of the meeting must be concluded in time to allow the public to vacate the building by 6:00 p.m.
(Free parking is available on the street or pay Ace Parking on the south side. Enter at the north entrance.)

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

DISABLED ACCESS TO MEETING

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

1. ROLL CALL

2. MINUTES APPROVAL

- a) Minutes of the June 2011 Regular Meeting (*Attachment A*)

3. PRESENTATION / TRAINING

- a) San Diego County Sheriff's Department Detentions Training Unit: Lieutenant D. Scott, Sergeant L. Coyne and Deputy S. Ceaser

4. EXECUTIVE OFFICER'S REPORT

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)

5. NEW BUSINESS

- a) Swearing in of new Review Board Member, Israel Garza

b) September 13, 2011 Meeting Cancellation

c) Board Member Comments

6. UNFINISHED BUSINESS

a) 08-012 / Dewall – SDSO Response pending for CLERB Policy Recommendations

b) 09-125 / Peruta – SDSO Response pending for CLERB Policy Recommendations

c) Rules and Regulations Committee Report

7. PUBLIC COMMENTS

This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three minutes.

8. CLOSED SESSION

a) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session).

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (6)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

10-029

1. Death Investigation / Officer Involved Shooting – Deputies 1 and 2 shot and killed Robert Clifford Reed.

Recommended Finding: Action Justified

Rationale: Deputies 1 and 2 responded in less than two minutes to an assault with a deadly weapon, with shots fired. They were subsequently confronted by Reed who was armed with two guns and had just fatally wounded two of his neighbors. Both deputies fired repeatedly after Reed ignored the command of “Don’t move” and instead raised a firearm toward them. The actions taken by the deputies were necessary and legally justified. No complaint of misconduct was received in this case.

10-046

1. False Arrest – Deputy 3 arrested the complainant for discharging a firearm, driving under the influence, and resisting arrest.

Recommended Finding: Action Justified

Rationale: Deputy 3 was dispatched to a report of shots fired. Subsequent investigation revealed that the complainant had discharged a firearm, was observed colliding with a pole and a neighbor's vehicle while parking his car, and resisted arrest. The conduct did occur but was lawful, justified, and proper.

2. Excessive Force – Deputy 4 beat the complainant resulting in injuries to include a broken arm.

Recommended Finding: Action Justified

Rationale: Deputy 4 took the complainant into custody and while he was escorted to a patrol vehicle the complainant kicked at the deputy, causing both to fall to the ground. The complainant continued the aggressive and assaultive behavior as he attempted to kick and head-butt the deputy. During a pat down search the complainant struck Deputy 4 in the mouth with his head. Deputy 4 used reasonable force to effect arrest and get the complainant to submit to custody. Independent witnesses corroborated Deputy 4's account of the contact. The evidence shows that the alleged act or conduct did occur, but was lawful, justified, and proper.

3. Misconduct/Procedure – Deputies 1, 2, 3, 5, and 6 watched as Deputy 4 beat the complainant.

Recommended Finding: Unfounded

Rationale: Deputies 1 and 3 were conducting a security sweep of the complainant's residence when the altercation took place and responded only after Deputy 4 requested assistance. Deputies 2, 5, and 6 arrived on scene after Deputy 4 had regained control of the complainant and he was seated in the patrol vehicle. Independent witnesses acknowledged that no deputies were present when the altercation took place. The evidence shows that the alleged act or conduct did not occur.

4. Misconduct/Procedure – Deputies 1, 2, 3, 4, and 6 failed to place the complainant under arrest and/or read him his rights.

Recommended Finding: Action Justified

Rationale: Deputy 4 advised the complainant that he was under arrest as he was escorted to the patrol vehicle. Deputies 1, 2, 3, 4, and 6 denied asking the complainant any questions relating to the events. An on-call detective responded to the scene and later attempted to talk with the complainant at the Sheriff's Station. The complainant invoked his right to an attorney and stated he did not want to speak with detectives. The evidence demonstrates that the complainant was advised he was under arrest, was not questioned about events until detectives arrived at which time he invoked his Miranda rights. The conduct did occur, but was lawful, justified, and proper.

5. Misconduct/Procedure – Deputies 3 and 6 denied the complainant the right to choose and performed a forced blood draw against the complainant's wishes.

Recommended Finding: Not Sustained

Rationale: Deputy 3, the arresting officer, requested a blood technician but was not present during the blood draw. Deputy 6 witnessed the blood draw conducted by the blood technician. Deputies 3 and 6 do not recall asking if the complainant would provide a voluntary sample. The complainant acknowledged he initially declined a blood draw but conceded after he was advised that force could be used to take a sample if necessary. There is insufficient evidence to either prove or disprove the allegation.

6. Misconduct/Harassment – Deputy 4 pulled the complainant over two weeks after his arrest for a faulty taillight which the complainant disputes.

Recommended Finding: Action Justified

Rationale: Deputy 4 observed the complainant's vehicle, proceeded to fall in behind the complainant, noted that the brake lights were not operating properly, and conducted a traffic stop. Deputy 4 had reasonable cause to conduct the traffic stop, and after the complainant provided Deputy 4 with necessary documentation he was issued a vehicle code violation warning and released. The evidence shows that the alleged act or conduct did occur, but was lawful, justified, and proper.

10-050

1. Misconduct/Procedure – Deputy 1 detained the complainant in a courthouse stairwell after she repeatedly told him “I don’t feel safe in here alone with you.”

Recommended Finding: Action Justified

Rationale: The complainant identified a courier to Deputy 2 as someone who had allegedly threatened her previous to this incident at the courthouse. Deputies 1 and 2 attempted to interview the involved parties separately, as per standard practices of investigation. Specifics supplied by the complainant and Deputy 1 vary in their context, but the complainant was never detained by Deputy 1. After the complainant relayed that she was scared and/or wanted to leave, Deputy 1 ended his attempts at an interview, which were only prompted by the complainant's request for assistance. The evidence shows the deputies' conduct was lawful, justified and proper.

2. Misconduct/Discourtesy – Deputy 1 told the complainant and other individuals she was “crazy and psycho.”

Recommended Finding: Not Sustained

Rationale: Deputy 1 said it was not he, but the courier who used the word “crazy” in describing the complainant. Deputy 2 confirmed he never heard Deputy 1 use the indicated language. Admittedly, Deputy 1 had concerns for the complainant's mental health and suggested she should seek treatment for psychological issues. There was insufficient evidence to either prove or disprove this allegation.

10-051

1. Misconduct/Procedure – Deputies 1, 2, and 3 performed a “hot stop” with weapons drawn on the complainant for “going up to 70 mph.”

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year, therefore the Review Board lacks jurisdiction.

2. False Arrest – Deputies 1, 2, and 3 arrested the disabled complainant for DUI.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Illegal Search & Seizure - Deputies 1 and 2 performed a search of the complainant's vehicle and trunk without permission.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure – Deputy 4 used the complainant’s cell phone to make a call and then confiscated the phone.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Medical – Deputy 4 denied the complainant prescribed medication resulting in pain, while he was incarcerated.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Procedure – Deputy 4 impounded the complainant’s vehicle just “to be cruel.”

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Misconduct/Discourtesy - Deputies 1 or 3 laughingly said, “Don’t worry he’s got AAA” in reference to impoundment of the complainant’s vehicle.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

8. Misconduct/Procedure – Deputy 4 failed to provide the complainant with the results of his blood/alcohol content and/or breathalyzer.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

9. Misconduct/Procedure – Deputy 4 held the complainant at the jail during a scheduled court appearance subsequently resulting in an arrest warrant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

10. Discrimination/Other – Deputies 1 and 3, who are white, “disrespected” the complainant who is a “disabled” (black) veteran.

10-055

1. Misconduct/Procedure – Deputy 2 prohibited the complainant from taking prescribed medications while at the courthouse.

Recommended Finding: Action Justified

Rationale: Deputy 2 stopped the complainant from taking medications from an unmarked prescription-type medicine bottle because she appeared to be under the influence of medication and would not provide the name of a physician or physicians to verify the prescriptions. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

2. False Arrest – Deputy 2 while “angry and with malice,” arrested the complainant.

Recommended Finding: Action Justified

Rationale: Deputy 2 took the complainant into custody because she displayed several controlled substance-type medications and refused to provide deputies with a means to confirm that she held the medication legally. The complainant became loud, argumentative, refused the directions of deputies, and was subsequently arrested by Deputy 2. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 2 failed to read the complainant her Miranda rights.

Recommended Finding: Action justified

Rationale: Deputy 2 did not read the complainant her Miranda rights. The complainant was uncooperative and agitated, as well as being considered under the influence. Because of the complainant's behavior and the nature of the arrest Deputy 2 did not intend to or conduct an interrogation, therefore it was not necessary to read the complainant her Miranda rights. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 2 failed to advise the complainant of her charges.

Recommended Finding: Not Sustained

Rationale: Deputy 2 advised the complainant that she was being charged with having medications in her position without proper prescription requirements or proper containers, and being under the influence of medication. There were no independent witnesses to this interaction and therefore there is insufficient evidence to prove or disprove this allegation.

5. Excessive Force – Deputy 2 handcuffed the complainant and placed her into leg shackles.

Recommended Finding: Action Justified

Rationale: Deputy 2 placed handcuffs on the complainant when she taken into custody because of her uncooperative behavior. While in the holding area the complainant complained of lower back pain and Deputy 2 switched the handcuffs for waist chains. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

6. False Reporting – Deputy 2 falsely reported to medical personnel that the complainant had attempted to overdose on prescribed medications.

Recommended Finding: Not sustained

Rationale: Deputy 2 denied making any such report to medical personnel. There were no independent witnesses to this interaction and therefore there is insufficient evidence to prove or disprove this allegation.

7. Misconduct/Procedure – Deputy 1 promised the complainant a phone call and bail option that did not occur.

Recommended Finding: Action Justified

Rationale: Deputy 1 advised the complainant that she would be able to make a phone call and have bail options explained after she completed the booking process at Las Colinas Detention Facility. Due to her Safety Cell placement she was unable to use the phone or complete the booking process. The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.

8. Misconduct/Procedure – Deputy 3 placed the complainant into a “cold, unsanitary ant-infested rubber room.”

Recommended Finding: Summary Dismissal

Rationale: The complainant was placed in a Safety Cell upon arrival at Las Colinas Detention Facility based the recommendation of County Mental Health authorities. Medical Staff re-evaluated the complainant in accordance with facility regulations and recommended that she remain in the Safety Cell. Sheriff's Department personnel attempted to relocate the complainant on two occasions for daily cleaning of the cell, but the complainant refused to move; on each occasion the Safety Cell was observed to be clean with no food, urine, or feces present. The Review Board lacks jurisdiction over medical personnel and the complainant was referred to

9. Criminal Conduct – Deputy 3 kicked, taunted, and sexually assaulted the complainant.

Recommended Finding: Unfounded

Rationale: None of the Sheriff Staff questioned about this case acknowledge that the complainant, or any inmate, had been taunted and sexually assaulted. The Watch Commander's logs for the period of confinement did not reveal any incidents or allegations of taunting or sexual assault generated by the complainant or any other inmates in the facility, during her period of incarceration. No such grievances or complaints were filed against Sheriff Staff. The evidence shows that the alleged act or conduct did not occur.

11-048

1. Misconduct/Procedure – The Sheriff's Department refused to assist the complainant with a TRO.

Recommended Finding: Summary Dismissal

Rationale: On April 27, 2011, the complainant submitted a signed complaint concerning incidents that occurred in 2009. The Review Board does not have jurisdiction to take any action in respect to complaints received more than one year after the date of the incident giving rise to the complaint. CLERB does not have authority to investigate this complaint based upon CLERB Rules & Regulations, 4.4 Citizen Complaints: Jurisdiction.

2. Misconduct/Procedure – Deputy 2 threw the complainant's possessions into the street.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Procedure – Deputy 3 did not help the complainant retrieve her prescription eyeglasses.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Procedure – Deputy 1 refused to take action on the complainant's correspondence.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure – Deputy 3 revealed the complainant's contact information to Deputy 2.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Criminal Conduct – Deputy 2 located the complainant and has made repeated attempts on her life.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

7. Misconduct/Procedure – The Sheriff's Department has repeatedly refused to protect the complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.